



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2008-0784; FRL-9965-02-R5]

Air Plan Approval; Wisconsin; Definition of Chemical Process Plants Under State PSD Regulations and Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the State Implementation Plan (SIP) for Wisconsin and revisions to the title V Operating Permit Program for Wisconsin. The revisions incorporate changes to the definition of "chemical process plants" under Wisconsin's Prevention of Significant Deterioration (PSD) and title V Operating Permit Programs. The changes to the state rules are consistent with EPA regulations governing state PSD and title V programs and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Clean Air Act (CAA)), or any other applicable requirement of the CAA. EPA proposed to approve this action on December 1, 2022, and received no adverse comments.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2008-0784. All documents in the docket are listed on the www.regulations.gov web site. Although

listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Rachel Rineheart, Environmental Engineer, at (312) 886-7017 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, rineheart.rachel@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information.

On December 1, 2022 (87 FR 73706), EPA proposed to approve revisions excluding ethanol production facilities that produce ethanol by natural fermentation from the chemical process plant source category in Wisconsin's PSD rules at NR 405 and in Wisconsin's title V operating permit program at NR 407. An

explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking, and will not be restated here. The public comment period for this proposed rule ended on January 3, 2023. EPA received no comments on the proposal.

II. Final Action.

EPA is approving revisions to the Wisconsin SIP in 40 CFR 52.2570. EPA is also approving revisions to the Wisconsin title V Operating Permit Program in 40 CFR part 70 appendix A. Specifically, EPA is approving NR 405.02(22)(a)(1) and NR 405.07(4)(a)(20), as published in the Wisconsin Register #631 on July 31, 2008, effective August 1, 2008, into the Wisconsin SIP. The revisions that EPA is approving change the definition of "major stationary source." EPA is not taking action on similar changes related to Nonattainment New Source Review in this action. This action approves changes to the state regulations that establish that the PSD applicability threshold for certain ethanol plants is 250 tons per year (tpy) and remove the requirement to include fugitive emissions when determining if an ethanol plant is subject to major source requirements under PSD and the title V Operating Permit Program. EPA has determined that these revisions are consistent with EPA's PSD and title V regulations and that approval of these revisions is consistent with the requirements of CAA section 110(1) and will not adversely impact air quality.

III. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Wisconsin Regulations discussed in section II. of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the

provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian

tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 2023.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR parts 52 and 70 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2570 is amended by adding paragraph (c) (147) to read as follows:

§ 52.2570 Identification of plan.

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(c) * * *

(147) On September 30, 2008, WDNR submitted a request to revise portions of its Prevention of Significant Deterioration Program. These changes establish that the major source threshold for certain ethanol plants is 250 tpy and remove the requirement to include fugitive emissions when determining if an ethanol plant is subject to major source requirements under the

Prevention of Significant Deterioration Program.

(i) Incorporation by reference. Wisconsin Administrative Code, NR 405 Prevention of Significant Deterioration. NR 405.02(22)(a)(1); NR 405.07(4)(a)(20), as published in the Wisconsin Register, July 2008, No. 631, effective August 1, 2008.

(ii) [Reserved]

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PART 70—STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

4. In appendix A to part 70 the entry for "Wisconsin" is amended by adding paragraph (e) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

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Wisconsin

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(e) Department of Natural Resources: Title V operating permit program revisions and updates received on September 30, 2008. Wisconsin's Title V program is hereby updated to include these requested changes.

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